

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

ITA No. 212 of 2007

Date of Decision: 2.11.2007

Commissioner of Income Tax-III, Ludhiana

...Appellant

Versus

Lakhbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Bansal, Advocate,
for the appellant-revenue.

M.M. KUMAR JUDGE, J.

This is revenue's appeal filed under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 24.8.2006, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for brevity, 'the Tribunal') in I.T. (SS) A. No. 42/Chandi/2003, in respect of block assessment period from 1.4.1988 to 8.1.1999 (A-III). The appellant-revenue has claimed that following substantial questions of law would arise for our determination:

1. Whether on the facts and circumstances of the case the Tribunal is correct in law in observing that the material relied upon by the Assessing Officer i.e.

the entries made in the seized documents, is irrelevant?

2. Whether on the facts and circumstances of the case the Tribunal is correct in law to accept that some of the entries as recorded in the seized documents are correct and the other part in the same documents are incorrect?
3. Whether on the facts and circumstances of the case the Tribunal is correct to observe that the entries recorded in the seized diary are not correct in view of the specific provisions in Section 132(4A) of the Income-tax Act, 1961, which states that any books of accounts and other documents found in the possession or control of any person at the time of search belong to him, and the contents of such books of account and other documents are true?
4. Whether the Tribunal is legally correct in holding that addition as undisclosed income in respect of salary on which tax has been deducted at source is not justified in the block assessment, when returns of income have not been filed for the assessment years comprised in the block period 1.4.1998 to 8.1.1999?

Brief facts of the case are that on 8.1.1999 a search and seizure operation under Section 132 of the Act was undertaken at the

residential premises of the assessee-respondent. On 16.11.1999, a notice under Section 158BC of the Act was issued requiring the assessee to file return in Form 2B within 30 days for the block period 1.4.1988 to 8.1.1999. The assessee-respondent, however, filed his return on 11.12.2000 after lapse of the stipulated period. In the meanwhile, on 27.6.2000, on basis of the seized books, documents and records available with the department, a questionnaire was also sent to the assessee-respondent for furnishing information, which was duly furnished by the counsel appearing for the assessee-respondent during the course of assessment proceedings. It is apposite to notice here that during the course of search and seizure operation, a diary was seized showing entries of properties allegedly belonging to the assessee-respondent. Another diary was also seized containing details of the marriage expenses of the daughter of the assessee-respondent. In his statement recorded on 8.1.1999, the assessee-respondent stated that Rs. 3 lacs were incurred as marriage expenses. After scrutinizing the record in detail, the Assessing Officer computed the total undisclosed income of the assessee-respondent as Rs. 43,53,519/- in respect of block period 1.4.1988 to 8.1.1999. It was further ordered that penalty proceedings under Section 158 BFA (2) of the Act for concealment and furnishing inaccurate particulars of income be initiated (A-I).

Assailing the order passed by the Assessing Officer, dated 30.1.2001 (A-I), the assessee-respondent preferred an appeal before the CIT (A)-II, Ludhiana, who vide his order dated 23.9.2003

(A-II), partly allowed the appeal confirming the additions made in the assessment order on various counts.

The assessee-respondent then further preferred an appeal before the Tribunal. The Tribunal also partly allowed the appeal deleting additions of (i) Rs. 2,90,000/- on account of construction; (ii) Rs. 2,00,000/- on account of expenditure incurred on the marriage of the daughter of the assessee-respondent; (iii) addition of Rs. 3,00,000/- on account of jewellery given by the wife of the assessee and grandmother paternal and grandmother material in the marriage; and (iv) Rs. 17,000/- on account of Shagans received in the marriage.

We have heard learned counsel for the assessee-appellant at a considerable length and find that the appeal merits dismissal because categorical findings have been recorded by the Tribunal. Therefore, we find that the appeal does not warrant admission as pure findings of fact have been recorded. Even the questions of law which have been claimed by the assessee-appellant proceed on presumption of facts which are contrary to the well based findings recorded in one tone by the Tribunal.

For the reasons aforementioned this appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 2, 2007
Pkapoor